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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,759	07/30/2003	Glenn Roy	02105.002355	6813

47050 7590 10/26/2005

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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT PAPER NUMBER

1761

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/629,759	ROY ET AL.	
	Examiner	Art Unit	
	Adepeju Pearse	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Objections*

1. Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is unclear how this claim further limits claim 9. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onishi et al (US 6,379,729) in view of Lenoble et al (US 5,908,650). With regard to claims 1 and 20-21, Onishi et al disclose a water soluble-color stabilized food such as fruit juice drinks, carbonated drinks etc (col 2 lines 50-57) containing water-soluble color selected from the group consisting of synthetic colors such as coal-tar color, natural colors such as anthocyanin color etc (abstract). However, Onishi et al failed to disclose a botanically derived color stabilizer in the food coloring composition. Lenoble et al teach an improved pigment composition containing an anthocyanin pigment and a pigment-improving agent selected from the group consisting of flavonoid glucuronides and caffeic acid derivatives, which have a phenylpropenoic carbonyl structure (abstract). It would have been obvious to one of ordinary skill in the art to modify Onishi et al with Lenoble et al to incorporate caffeic acid derivatives in order to increase the stability of the pigment composition and increase the intensity of the pigments in a food product. With regard to claim 2, Onishi et al disclose examples of coal tar color including acid red 51 (FD &C Red #3), acid yellow 23 (FD & C Yellow #5), food yellow 3 (FD & C Yellow #6), acid red 92 (D & C Red #28), food blue 2 (FD & C blue #1), acid blue 74 (FD & C Blue #2), etc (col 3 lines 52-56). It would be obvious to expect that these dyes will perform the same function as disclosed by the applicant because they are identical. With regard to claims 3 and 4, Onishi et al disclose a weight

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% of 0.001% (10ppm) of FD & C Yellow #5 in an experimental example (col 5 lines 2-3) and 0.0005% of FD & C Blue #1 (5ppm) (col 6 lines 1). These amounts are within applicant's range. It would be obvious to expect a sufficient amount of color impartation identical to applicants' in a food product. With regard to claims 5-7, Onishi et al failed to disclose a botanically derived color stabilizer. However, Lenoble et al teach adding pigment-improving agents derived from plant extracts to stabilize food color additives (col 2 lines 57-60) in amounts of 0.1% or less (1000ppm or less) and preferably 100-500ppm (col 4 lines 42-44). These ranges are within applicant's recited ranges. It would have been obvious to one of ordinary skill in the art to modify Onishi et al with Lenoble et al by incorporating these pigment improvement agents at these ranges in order to increase stability of the pigment composition. With regard to claim 8, Lenoble et al teach that caffeic acid derivative and rosmarinic acid are useful as pigment improving agents (col 3 lines 24-26). It would be obvious to one of ordinary skill in the art to modify Onishi et al by incorporating these acids as pigment-improving agents. With regard to claims 9-15, Lenoble et al teach that plant sources useful include any food and GRAS material which contains appreciable amounts of flavonoid glycuronides, flavonoid glycosides or caffeic acid derivatives (col 4 lines 17-20), a variety of C6-C3 phenylpropenoic compounds including flavones, luteolin, apigenin, quercetin, kaemferol, gossypetin, etc are also disclosed in (col 6 lines 12-39). It would have been obvious tone of ordinary skill in the art to modify Onishi et al by incorporating these materials to improve color retention. With regard to claim 16 – 18, Lenoble et al teach that the pigment-improving agents are naturally occurring plant extracts (col 3 lines 1-5), Lenoble et al also teach that extracts can be made from the materials in tables I and II, such as chamomile and rosemary extract (col 6 lines 66-67). It would have been obvious to

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one of ordinary skill in the art to modify Onishi et al by incorporating these plant extracts because they have no known toxic or carcinogenic effects (col 3 lines 1-5). With regard to claim 19, Onishi et al disclose sorbic acid and/or its salt incorporated into a food colored with natural and synthetic dyes exhibited a higher stabilizing effect (col 2 lines 39-42). With regard to claims 22-25, Onishi et al disclosed a variety of coal tar dyes as cited. Lenoble et al teach a variety of plant extracts suitable in the pigment-improving agents. Absent any clear, convincing and/or arguments to the contrary, one skilled in the art would be motivated to use any of the synthetic dyes because of their well known function of being safe colorants or the plant extracts because they have no toxic or carcinogenic effects and are obtained relatively easy.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peju Pearse  
Art Unit 1761



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